RSA 20/2007
BEFORE
HON’BLE MR. JUSTICE H BARUA

Heard Shri B.Ullah, learned counsel for the appellants and Shri G.Mishra, learned counsel for the respondents.

This second appeal is directed against the concurrent judgment and decree dated 02.11.2006 passed by the learned Civil Judge (Sr.Divn.) No.II, Kamrup, Guwahati in Title Appeal No.67 of 2004 dismissing the appeal and confirming the judgment and decree dated 05.8.2004 passed by the learned Civil Judge (Jr.Divn.) No. I, Kamrup, Guwahati in Title Suit No. 238 of 2002. By these judgments, both the courts below have decreed the suit of the respondents/plaintiffs for recovery of khas possession of the suit-land with permanent injunction.

Shri B.Ullah, learned counsel for the appellants submitted that the appeal involves substantial question of law to decide whether the decree for recovery of possession based on title can be granted without proof of title.

In support of his submission, Shri B.Ullah relied upon the judgments of Hon’ble Supreme Court rendered in the case of Nagar Palika, Jind v. Jagat Singh (AIR 1995 SC 1377) and in the case of Bhavnagar Municipality v. Union of India (AIR 1990 SC 717). Besides this, two more judgments from Gauhati High Court given in the cases of Angomjambam Tomba Singh & anr. vs. R. K. Maipaksana Singh & ors. (AIR 1975 Gauhati 12) and Hanjabam Bapumacha Sharma(AIR 1975 Gauhati 47) were also relied upon.

On the other hand, Shri G.Mishra, learned counsel for the respondents submitted that proof of title was not necessary since the appellants/defendants had admitted the title of the respondents over the suit-land in a previous suit being Title Suit No.156 of 1998. To buttress this submissions, learned counsel cited authority of the Hon’ble Apex Court given in the case of Thimmappa Rai v. Ramanna Rai & ors., reported in 2007 SAR(Civil) 571 wherein the Hon’ble Supreme Court has held that the admission made by a party in an earlier proceeding is admissible against him in subsequent proceedings under section 58 of the Indian Evidence Act. Besides this, learned counsel for the respondents submitted that this court need not interfered against the concurring judgments.

There was no dispute at the Bar that the present appellants had instituted the suit in the court of Civil Judge (Jr.Divn.) at Guwahati in the year 1998 seeking a decree of title over the same suit-land by way of adverse possession. The suit was dismissed on contest on 13.11.2000. The said judgment was challenged vide Title Appeal No. 67 of 2000. The appeal was also dismissed on 18.01.2002. In this way, the claim of the present appellants for acquiring title over the suit-land by way of adverse possession attained its finality. Thereafter, the respondents instituted Title Suit No. 238 of 2002 seeking ejectment of the appellants. The suit was decreed in favour of the respondents vide judgment and decree dated 05.8.2004. This decree was affirmed by

the learned Civil Judge (Sr.Divn.) No. II, Kamrup, Guwahati vide judgment dated 02.11.2006 passed in Title Appeal No. 67 of 2004. In this way, there are as many as four judgments and decrees against the present respondents.

In a catena of judgments from the Hon’ble Supreme Court, it has

been held that questions of law and substantial questions of law are two different things. It has also been held that interference in concurrent findings should only be in exceptional cases in the second appeal. Again in the case of Thiagaranjan & ors. V. Sri Venugopalswami B.Koil & ors. reported in (2004) 5 SC 762 , the Hon'ble Supreme Court has held that it is the duty of the High Courts to follow the intention of the legislature in amending Section 100 of the Code of Civil Procedure. The relevant part of the observations of the Hon'ble Supreme Court are reproduced below: -

26. To say the least approach of the High Court was not proper. It is the obligation of the courts law to further the clear intendment of the legislature and not frustrate it by excluding the same. This court in a catena of decisions held that where findings of fact by the lower appellate court are based on evidence, the High Court in second appeal cannot substitute its own findings on reappreciation of evidence merely on the ground that another view was possible .

Similarly, in the case of Kondiva Dagadu Kadam v. Savitribai Sopan Gujar, (AIR 1999 SC 2213), the Hon'ble Supreme Court has given a caution in interfering with concurrent findings of fact. It will be apposite to extract the relevant observations below:-

In exercise of the powers under this Section the findings of fact of the 1st appellate Court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal can not be decided on merely equitable grounds. The concurrent findings of facts however erroneous cannot be disturbed by the High Court in exercise of the powers under this Section. The substantial question of law has to be distinguished from a substantial question of fact.

Again, in the case of Gurdev Kaur & ors. V. Kaki & ors, reported in 2006 (3) Supreme 631, the Hon'ble Supreme Court has held as below :-

Indiscriminate and frequent interference under Section 100 C.P.C. in cases which are totally devoid of any substantial question of law is not only against the legislative intention but is also the main cause of huge pendency of second appeals in the High Courts leading to colossal delay in the administration of justice in civil cases in our country.

In the appeal before me, there is no dispute that in the earlier suit being Title Suit No. 156 of 1998, the parties were the same and the claim of title by the appellants was against the present set of respondents. In previous suit, the plaintiffs (now appellants) made a statement in the plaint about the purchase of the suit-land by the defendants (now respondents). In view of this admission, no issue regarding title of the defendants

was formulated and the trial court has recorded in the judgment that the plainti

ffs have admitted the title of the defendants. This finding was not challenged in the appeal.

According to Shri B.Ulla, learned counsel for the appellants, admission of a party regarding title over the immovable property is not enough to declare a title. Learned counsel also submitted that under Proviso to Section 58 of the Indian Evidence Act the court has the discretion to ask the parties to prove the admitted facts.

Apparently, proviso to Sec. 58 of the Evidence Act is not mandatory. In appropriate cases, civil courts may insist for further proof of the admission.

Be that as it may, I am of the view that filing of a suit claiming title over the suit-land on the plea of adverse possession impliedly admits the fact that the plaintiffs have admitted ownership and title of the defendants. All the judgments cited on behalf of the appellants regarding proof of title are distinguishable on facts.

Upon hearing the learned counsel for both the sides, I am of the opinion that it is not a fit case, which calls for further scrutiny under the limited ambit and scope of this court under section 100 of the Code of Civil Procedure. Consequently, I do not find any merit in the second appeal and the same is hereby dismissed at the admission stage.